

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL NO. 09-10141-RGS

UNITED STATES OF AMERICA

v.

TYSON BRITTO

ORDER ON DEFENDANT'S OBJECTION TO COUNTING
JUVENILE COURT "DELINQUENT FILED" DISPOSITION
OF RESISTING ARREST CHARGE

November 18, 2010

STEARNS, D.J.

Having reviewed defendant's Memorandum and the government's Response, I am persuaded that defendant Tyson Britto's 2006 "delinquent filed" disposition in the Bristol Juvenile Court should not be counted as a prior conviction under U.S.S.G. § 4A1.1. Several things lead me to this conclusion.

The first is the logical force of the analysis by Judge Woodcock of the identical issue in his Order in United States v. Carey, 08-CR-10157 (D. Maine, June 8, 2010). The second is the fact that the Supreme Judicial Court of Massachusetts (as Judge Woodcock observes) does not treat a filed disposition as a conviction on the well-settled rule that a judgment of conviction does not enter until a sentence is imposed (when a complaint or indictment is placed on file the judge does not impose a sentence). See Commonwealth v. Simmons, 448 Mass. 687, 688 n.2 (2007). Third, while I am sensitive to the fact that the United States as a sovereign is not bound by state definitional law in determining the countability of a conviction under the Sentencing Guidelines (the difference in state and federal law in distinguishing the dividing line between a felony and a misdemeanor

conviction comes readily to mind), there is much to be said in favor of a common understanding by state and federal courts of dispositional terms. See Commonwealth v. Sebastian S., a juvenile, 444 Mass. 306, 312 (2005). This is especially true in a case like this one where the treatment of Britto's juvenile filed disposition as a countable conviction escalates a 60-month mandatory minimum sentence to a low end career offender guideline sentence of 188 months.¹

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

¹In reality, the disparity is even greater as Britto is safety-valve qualified (but for the counting of the delinquent filed disposition).